

### **REMARKS**

Claims 1, 3, 5-9, 11, 13-17, 19 and 21-24, all the claims pending in the application, stand rejected on prior art grounds. Applicant respectfully cancels claims 2, 4, 10, 12, 18 and 20 without prejudice or disclaimer. Applicants respectfully traverse these rejections based on the following discussion.

#### **I. The Prior Art Rejections**

Claims 1-3, 6-11, 14-19 and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Miller, et al. (U.S. Patent No. 5,640,569), hereinafter referred to as Miller, in view of Krishnaswamy, et al. (U.S. Patent No. 5,867,494), hereinafter referred to as Krishnaswamy, in further view of Gray, et al. (U.S. Publication No. 2002/0082856 A1), hereinafter referred to as Gray. Claims 4-5, 12-13 and 20-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Miller, et al. (U.S. Patent No. 5,640,569), hereinafter referred to as Miller, in view of Krishnaswamy, et al. (U.S. Patent No. 5,867,494), hereinafter referred to as Krishnaswamy, in further view of Ferstenberg, et al. (U.S. Patent No. 5,873,071 A), hereinafter referred to as Ferstenberg. Applicants respectfully traverse these rejections based on the following discussion.

#### **A. The Rejection Based on Miller in view of Krishnaswamy, in further view of Gray**

Regarding independent claims 1, 9 and 17, and related dependent claims 2, 3, 8, 10, 11, 16, 18, 19 and 24, first, the references, separately, or in combination, fail to disclose, teach or suggest a reason or motivation for being combined.

Second, even assuming that the references would have been combined, Miller, as discussed in the previous amendment, does not teach or suggest the features of independent claim 1, and similarly independent claims 9 and 17, which incorporate dependent claims 2, 4, 10, 12, 18, and 20, including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications, and the mutual online negotiations takes place between software-based agents representing the customers and the resource center. (See Page 5, lines 5-7; Page 6, lines 1-2; Page 9, lines 10-15; Page 10, lines 9-10; and Page 14, line 19-Page 15, line 5).

Applicant agrees with the Examiner that Miller "does not specifically disclose dynamic allocation of resources," accordingly Miller is deficient in not disclosing or teaching Applicant's claimed invention. (See Office Action, Page 5, lines 4-7).

Krishnaswamy is also deficient.

Indeed, contrary to the assertion in the Office Action, there is no teaching or suggestion in Krishnaswamy regarding negotiating the allocation and pricing of resources based on any one of several parameters, let alone, that dynamically allocating and pricing resources is accomplished through mutual negotiations. Rather, Krishnaswamy merely states in column 31, lines 48-51 that the allocation techniques range from a "static configuration to [a] fully dynamic allocation of resources on a transaction by transaction basis."

Accordingly, there is no teaching of implementing a negotiation technique whereby any one of the following parameters are used: "the customers requesting the resource center to acquire and release resources at any time; the resource center

conducting an auction of all available resources in a shared resource pool at predetermined intervals to determine the allocation and pricing of the resources for a subsequent time interval; and the resource center publishing said prices at which the resources of the shared resource pool can be acquired or released by the customers, whereby the customers use the prices for determining whether to request releasing or acquiring said resources." These differences distinguish the claimed invention from the prior art references, but also indicate that the prior art references each take mutually exclusive paths to solve wholly unique and different problems. In this regard, the prior art references actually teach away from the claimed invention due to the different solutions and different problems which are the subject of the respective prior art references. Therefore, Krishnaswamy, like Miller, does not disclose, teach or suggest including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications, and the mutual online negotiations takes place between software-based agents representing the customers and the resource center. (See above).

For emphasis, Applicant further agrees with the Examiner that Miller and Krishnaswamy do not specifically disclose "allocating of the resources includes transferring, by the resource center, the resources from one customer to another customer." Applicant also agrees with the Examiner that Miller and Krishnaswamy do not specifically disclose that "mutual online negotiations can take place between software-based agents representing the customers and the resource center." (See Office Action, Page 5, lines 17-20; and Page 7, Section 8, lines 5-10).

Gray is also deficient.

Indeed, Gray merely discloses a resource sharing system using sliding constraints for dynamically adjusting the priorities at which requests from applications in different request classes for a shared resource are processed. Contrary to the assertion in the Office Action, Gray only discloses that "resources are allocated by entities on the basis of negotiated guarantees of availability," not dynamically allocating and pricing resources is accomplished through mutual negotiations between the customers and the resource center through electronic communications or otherwise, let alone, the mutual online negotiations takes place between software-based agents representing the customers and the resource center.

The Office Action clearly indicates that Gray does not teach the above features as only the Ferstenberg reference is cited as potentially teaching that the mutual online negotiations takes place between software-based agents representing the customers and the resource center, for example, claims 4, 12 and 20. Therefore, Gray also does not disclose, teach or suggest including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications, and the mutual online negotiations takes place between software-based agents representing the customers and the resource center. (See Gray at Abstract; and Page 3, Paragraph [0036]).

For at least the reasons outlined above, Applicant respectfully submits that none of Miller, Krishnaswamy, or Gray, alone or in combination, disclose, teach or suggest, including as recited in independent claim 1, and similarly independent claims 9 and 17, of Applicant's invention, including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the

resource center through electronic communications, and the mutual online negotiations takes place between software-based agents representing the customers and the resource center

For the reasons stated above, the claimed invention, and the invention as cited in independent claims 1, 9 and 17, which incorporate dependent claims 2, 10 and 18, and related dependent claims 3, 8, 11, 16, 19 and 24, is fully patentable over the cited references.

**B. The Rejection Based on Miller in view of Krishnaswamy, in further view of Ferstenberg**

Regarding independent claims 1, 9 and 17, and related dependent claims 4, 5, 12, 13, 20 and 21, first, the references, separately, or in combination, fail to disclose, teach or suggest a reason or motivation for being combined.

Indeed, Applicant submits that at least three references have been "kluged" together in an attempt to disclose Applicant's invention.

Second, even assuming that the references would have been combined, Miller, as discussed above, does not teach or suggest the features of independent claim 1, and similarly independent claims 9 and 17, which incorporate dependent claims 2, 4, 10, 12, 18, and 20, including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications or otherwise, the mutual online negotiations takes place between software-based agents representing the customers and the resource center.

(See Page 5, lines 5-7; Page 6, lines 1-2; Page 9, lines 10-15; Page 10, lines 9-10; and Page 14, line 19-Page 15, line 5).

Further, as discussed above, Applicant also agrees with the Examiner that Miller and Krishnaswamy "do not specifically disclose that "mutual online negotiations can take place between software-based agents representing the customers and the resource center." (See Office Action, Page 7, Section 8, lines 5-10). Since neither Miller nor Krishnaswamy teach the above feature, for example, from dependent claims 4, 12 and 20, which have been incorporated into Applicant's claimed invention, both Miller and Krishnaswamy are deficient.

Ferstenberg is also deficient.

Indeed, Ferstenberg merely discloses software processes distributed on one or more computer systems that exchange messages in order to facilitate an intermediated exchange of financial commodities between a plurality of participants. The messages are exchanged according to a preferred protocol that leads to a satisfactory exchange that meets the objectives of the participants, and that substantially maximizes in a fair manner the total amount of financial commodities exchanged.

Applicant respectfully submits that the Office Action mischaracterizes Ferstenberg as Ferstenberg only teaches that "it permits the flexibility to dynamically adapt to market conditions that affect the price and availability of individual commodities," not the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications or otherwise, as claimed by Applicant. (See Ferstenberg at Abstract; and Column 2, lines 36-47).

Further, Ferstenberg includes a preferred message-exchange protocol for the construction of computer programs representing exchange participants and an intermediary. These constructed computer programs exchange messages such that a satisfactory intermediated exchange of commodities is substantially certain to be achieved. This approach is different and wholly unique from the claimed invention, which is not specifically directed to message-exchange protocols.

Accordingly, contrary to the assertion in the Office Action, Ferstenberg only discloses that "electronic agents (e-agents), each of which represents a participant's exchange goals, and electronic intermediary, through which the e-agents conduct electronic negotiations lead to an intermediated exchange." Consequently, Ferstenberg teaches a passive message exchange through a single electronic intermediary, whereas, Applicant discloses that active mutual online negotiations takes place between software-based agents representing the customers and the resource. Therefore, Ferstenberg like Krishnaswamy and Miller, does not disclose, teach or suggest including the dynamically allocating and pricing resources is accomplished through mutual on-line negotiations between the customers and the resource center through electronic communications, and the mutual online negotiations takes place between software-based agents representing the customers and the resource center. (See Column 3, lines 22-41).

For at least the reasons outlined above, Applicant respectfully submits that none of Ferstenberg, Krishnaswamy, or Miller, alone or in combination, disclose, teach or suggest, including as recited in independent claim 1, and similarly independent claims 9 and 17, of Applicant's invention, the claimed features as cited above.

For the reasons stated above, the claimed invention, and the invention as cited in independent claims 1, 9 and 17, which incorporate dependent claims 4, 12, and 20, and related dependent claims 5, 13 and 21, is fully patentable over the cited references.

## II. Formal Matters and Conclusion

With respect to the rejections to the claims, the claims have been amended, above, to overcome these rejections. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections to the claims.

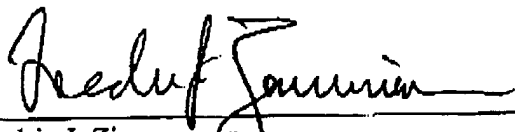
In view of the foregoing, Applicants submit that claims 1, 3, 5-9, 11, 13-17, 19 and 21-24, all the claims presently pending in the application, are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary. Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

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